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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,140	11/16/1999	BEKA SOLOMON	SOLOMONIREI	3910
1444 7590 11/08/2011 Browdy and Neimark, PLLC 1625 K Street, N.W. Suite 1100 Washington, DC 20006			EXAMINER BALLARD, KIMBERLY	
			ART UNIT 1649	PAPER NUMBER
			MAIL DATE 11/08/2011	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BEKA SOLOMON

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Appeal 2011-009879  
Application 09/441,140  
Technology Center 1600

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DECISION ON PETITION

This is a decision on the “REVISED PETITION UNDER 37 C.F.R. § 41.3,” filed October 27, 2011 (“Petition”). The Petition requests

permission to file a supplemental reply brief in this case, which presents additional arguments not previously made in appellant’s main brief on appeal or reply brief and which, *inter alia*, requests that certain claims be considered separately from certain other claims. The supplemental reply brief to be filed upon acceptance of this petition is submitted herewith.

(Petition 2). The petition fee of \$400 pursuant to 37 C.F.R. § 1.17(f) was charged to the Petitioner’s deposit account on October 27, 2011.

FINDINGS

- 1) On December 16, 1994, Petitioner filed Application 08/358,786.

- 2) On November 18, 1997, Application 08/358,786 issued as U.S. Patent 5,688,651.
- 3) On November 16, 1999, Petitioner filed the instant reissue application 09/441,140 with a preliminary amendment.
- 4) On September 5, 2000, a non-final rejection was mailed to Petitioner.
- 5) On January 8, 2001, Petitioner filed an amendment.
- 6) On June 29, 2001, a non-final rejection was mailed to Petitioner.
- 7) On December 31, 2001, Petitioner filed an amendment.
- 8) On June 21, 2002, Petitioner filed an amendment.
- 9) August 22, 2002, Petitioner filed a supplemental amendment.
- 10) On August 22, 2003, a final rejection was mailed to Petitioner.
- 11) On January 22, 2004, Petitioner filed a Notice of Appeal.
- 12) On February 23, 2004, Petitioner filed an amendment with a declaration under 37 C.F.R. §1.132.
- 13) On April 26, 2004, Petitioner filed a duplicate of the February 23, 2004 submission.
- 14) On June 10, 2004, a final rejection was mailed to Petitioner.
- 15) On August 9, 2004, Petitioner filed an amendment.
- 16) On August 18, 2004, Petitioner filed an amendment.
- 17) On August 25, 2004, Petitioner filed a supplemental amendment.
- 18) On September 10, 2004, a non-final rejection was mailed to Petitioner.
- 19) On March 17, 2005, Petitioner filed an amendment.
- 20) On July 29, 2005, a non-final rejection was mailed to Petitioner.
- 21) On January 17, 2006, Petitioner filed an amendment.
- 22) On June 2, 2006, a final rejection was mailed to Petitioner.

- 23) On August 2, 2006, Petitioner filed an amendment.
- 24) On September 19, 2006, a non-final rejection was mailed to Petitioner.
- 25) On March 19, 2007, Petitioner filed an amendment with four declarations under 37 C.F.R. §1.132.
- 26) On June 19, 2008, a final rejection was mailed to Petitioner.
- 27) On December 18, 2008, Petitioner filed an amendment with a declaration under 37 C.F.R. §1.132.
- 28) On March 23, 2009, a non-final rejection was mailed to Petitioner.
- 29) On September 23, 2009, Petitioner filed an amendment.
- 30) On December 10, 2009, a final rejection was mailed to Petitioner.
- 31) On May 10, 2010, Petitioner filed an amendment and a Notice of Appeal.
- 32) On November 10, 2010, Petitioner filed an Appeal Brief.
- 33) On March 30, 2011, an Examiner's Answer was mailed to Petitioner.
- 34) On May 31, 2011, Petitioner filed a 55 page Reply Brief and a request for oral hearing.
- 35) On June 15, 2011, an acknowledgement to the Reply Brief was mailed to Petitioner.
- 36) On October 27, 2011, Petitioner filed the instant Petition.

#### FACTS RELATED TO DIVISIONAL APPLICATION

- 37) On February 22, 2006, Petitioner filed a Divisional of the instant Application 09/441,140 as Application 11/358,951.
- 38) On September 20, 2006, a Restriction Requirement was mailed to Petitioner.

- 39) On December 20, 2006, Petitioner filed an election to the Restriction Requirement.
- 40) On February 12, 2007, a non-final rejection was mailed to Petitioner.
- 41) On June 12, 2007, Petitioner filed an amendment.
- 42) On July 26, 2007, a final rejection was mailed to Petitioner.
- 43) On January 28, 2008, Petitioner filed a Request for Continued Examination and an amendment.
- 44) On June 19, 2008, a non-final rejection was mailed to Petitioner.
- 45) On December 19, 2008, Petitioner filed an amendment.
- 46) On March 23, 2009, a final rejection was mailed to Petitioner.
- 47) On September 23, 2009, Petitioner filed a Notice of Appeal and an amendment.
- 48) On December 8, 2009, a non-final rejection was mailed to Petitioner.
- 49) On June 8, 2010, Petitioner filed an amendment.
- 50) On September 30, 2010, a final rejection was mailed to Petitioner.
- 51) On December 30, 2010, Petitioner filed a Notice of Appeal.
- 52) On June 30, 2011, Petitioner filed an Appeal Brief.
- 53) On August 22, 2011, an Examiner's Answer was mailed to Petitioner.
- 54) On October 24, 2011, Petitioner filed a 49 page Reply Brief and a request for oral hearing.

#### RELEVANT AUTHORITY

37 C.F.R. § 41.41 states

(a)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

(2)A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(b)A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with paragraph (a) of this section.

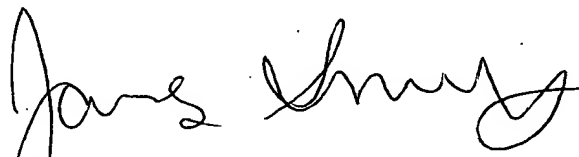
(c)Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

#### DISCUSSION

The Petition states that “[t]he supplemental reply brief to be filed upon acceptance of this petition is submitted herewith.” (Petition 2). No supplemental reply brief was submitted with the instant petition for consideration. There is nothing with which to grant the relief requested.

#### DECISION

For the reasons set forth above, the Petition is DISMISSED.

A handwritten signature in black ink, appearing to read "James Smith", written over a horizontal line.

James Donald Smith  
Chief Administrative Patent Judge